IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

TERRI LYNN WOODSIDE,
Petitioner/Appellee,

v.

LARRY JAMES WOODSIDE,
Respondent/Appellant.

No. 2 CA-CV 2013-0144
Filed July 29, 2014

Appeal from the Superior Court in Graham County
No. DO201200191
The Honorable D. Corey Sanders, Judge Pro Tempore

AFFIRMED

COUNSEL

Gillespie, Shields & Durrant, Mesa
By Mark A. Shields
Counsel for Petitioner/Appellee

Decker Holland, LLC, Snowflake
By Joseph E. Holland
Counsel for Respondent/Appellant

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Larry Woodside appeals from the trial court's decree of dissolution of marriage, which awarded permanent monthly spousal maintenance to Terri Woodside in the amount of $800 and apportioned a higher value of real and personal property to Terri than to Larry. He contends the court erred by refusing to make additional findings of fact and conclusions of law, and that it erred in calculating the amount of spousal maintenance. Alternatively, he argues the division of property was inequitable. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to sustaining the trial court's ruling. *Bell-Kilbourn v. Bell-Kilbourn*, 216 Ariz. 521, n.1, 169 P.3d 111, 112 n.1 (App. 2007). Larry and Terri were married in April 1985. Terri filed a petition for dissolution of the marriage in May 2012. Pursuant to Terri's request for temporary spousal maintenance, the trial court awarded her $975 per month. In lieu of a trial, the parties agreed to submit the case to the court through memoranda and affidavits. The parties' memoranda stated they had agreed to a property division and the only remaining issues were the amount of spousal maintenance and any attorney fees. Each party also attached a list of real and personal property with items apportioned to each of them. After a disagreement over counseling records attached to Terri's memorandum, the court set the matter for a bench trial.

¶3 On the first day of trial, Larry and Terri still agreed on how to divide the property but did not agree about the value of each

item.[1] Over two days, both testified about the value of each item, as well as their marriage, employment, and earning capacity. At the end of the second day, the trial court concluded the parties were bound by the property division lists they had presented. Only three issues remained: the value of the property, spousal maintenance, and attorney fees.

¶4 In its unsigned ruling, the trial court "accept[ed] as fact [Larry's] version of the property values,"—approximately $149,000 for Terri and $74,000 for Larry—and distributed the property as requested by the parties. The court also awarded Terri $800 per month in permanent spousal maintenance and concluded that each party would bear his or her own fees and costs. After hearing oral argument on the proposed form of decree, the judge signed the decree and this timely appeal followed.

Entitlement to Findings of Fact and Conclusions of Law

¶5 Although Larry's primary contention on appeal is that the trial court erred in determining the amount of spousal maintenance, we must first address his argument that he was entitled to additional findings of fact and conclusions of law. This is because we may generally "infer that the trial court has made the additional findings necessary to sustain its judgment"; however, if he was entitled to further findings of fact and conclusions of law, we may not make such inferences. *See Elliott v. Elliott*, 165 Ariz. 128, 135, 796 P.2d 930, 937 (App. 1990).

¶6 Larry contends the trial court erred by denying the motion for findings of fact and conclusions of law supporting the award of spousal maintenance that he filed pursuant to A.R.S. § 25-318(R). He argues the court erred in concluding § 25-318(R) did not apply to his case.

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[1]The parties considered exchanging three items on the list—giving one item of real property to Terri in exchange for a van and tools initially assigned to her—but they could not agree on the value, and the trial court determined the property division the parties had presented was binding.

¶7 We review the trial court's interpretation of a statute de novo. *Ariz. Citizens Clean Elections Comm'n v. Brain*, 234 Ariz. 322, ¶ 11, 322 P.3d 139, 142 (2014). To determine a statute's meaning, we first look to the plain language, *PNC Bank v. Cabinetry By Karman, Inc.*, 230 Ariz. 363, ¶ 6, 284 P.3d 874, 876 (App. 2012), and construe the words and phrases "according to the common and approved use of the language," A.R.S. § 1-213. We need not resort to other methods of statutory interpretation, "'unless application of the plain meaning would lead to impossible or absurd results.'" *Winterbottom v. Ronan*, 227 Ariz. 364, ¶ 5, 258 P.3d 182, 183 (App. 2011), *quoting N. Valley Emergency Specialists, LLC v. Santana*, 208 Ariz. 301, ¶ 9, 93 P.3d 501, 503 (2004).

¶8 Section 25-318(R) states: "If any part of the court's division of joint, common or community property is in the nature of child support or spousal maintenance, the court shall make specific findings of fact and supporting conclusions of law in its decree." Application of the statute is necessarily determined by whether the property division is in the nature of spousal maintenance. A.R.S. § 25-318(R). "In the nature of" is a common phrase meaning "having the characteristics of."[2] Additionally, spousal maintenance as used in title 25 is intended to support a spouse who has insufficient property to provide for his or her reasonable needs, or lacks earning ability due to age or other factors. A.R.S. § 25-319(A). Because the language of § 25-318(R) is clear, we may determine whether a property division has the characteristics of spousal maintenance without resorting to additional statutory interpretation. *See PNC Bank*, 230 Ariz. 363, ¶ 7, 284 P.3d at 876.

¶9 Larry argues the property distribution was in the nature of spousal maintenance because the parties intended it to be, and because the trial court concluded in an unsigned ruling that Terri was entitled to spousal maintenance in a reduced amount from the

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[2] *See* Webster's Third New Int'l Dictionary at 1508 (1971) (nature def. 6. "kind, order, or general character"), *see also* www.oxforddictionaries.com/us/definition/american_english/nature (defining "in the nature of" as "[s]imilar in type to or having the characteristics of") (last visited July 9, 2014).

amount awarded as temporary maintenance. He does not provide further support for this argument as it relates to applicability of § 25-318(R).[3]

¶10 Larry's brief references to the party's intents and the trial court's ruling do not support a conclusion that the property disparity had the characteristics of spousal maintenance. Regarding the intent of the parties, although Larry was clear at trial that he wanted the property distribution to reduce spousal maintenance, Terri stated only that she was "willing to accommodate [Larry's] desire to reduce the amount and/or duration of spousal maintenance" with the property division but she could not be expected to become self-sufficient selling tools at swap meets. Additionally, Terri stated at trial that there was no disparity in the property division, and when asked to show there existed an agreement regarding the offset, neither party was able to produce anything. In view of these competing statements and the record before us, we cannot say the parties' intent was clear and without dispute.

¶11 Additionally, the trial court's reference to the fact that the amount of spousal maintenance it was awarding Terri was less than what it had awarded to her as temporary spousal maintenance does not show that the disparity had the characteristics of spousal maintenance. Larry contends in his reply brief that any reduction must have been due to the property division. But the temporary order was based on, among other things, testimony at a hearing, the transcript of which is not included in the record. It is unclear if the court reduced the amount of spousal maintenance because of the

[3] Most of Larry's argument focuses on the importance of precise findings of fact and conclusions of law and he relies on *Elliott*, 165 Ariz. at 135, 796 P.2d at 937, and *Reed v. Reed*, 154 Ariz. 101, 103-07, 740 P.2d 963, 965-69 (App. 1987). In those cases, however, the parties were entitled to such findings because a party had requested findings of fact and conclusions of law before trial pursuant to Rule 52(a), Ariz. R. Civ. P., which Larry concedes he did not do here. *See Elliott*, 165 Ariz. at 130, 740 P.2d at 932; *Reed*, 154 Ariz. at 103, 740 P.2d at 965.

property division, or due to other evidence introduced at trial. Thus, the record does not support Larry's contention.

¶12 Finally, the trial court made its own intent clear when it denied Larry's request for findings of fact and conclusions of law stating that the property division was not "in the nature of" spousal maintenance. On the facts before us, § 25-318(R) did not apply in this case, and the court did not err in denying the request for additional findings of fact and conclusions of law on that basis. Therefore, where additional findings—such as a mathematical basis for the award—are not included in the court's rulings, we may infer that it made the additional findings necessary to sustain its judgment. *See Elliott*, 165 Ariz. at 135, 796 P.2d at 937.

Spousal Maintenance

¶13 Larry contends the trial court abused its discretion in determining the amount of spousal maintenance because it failed to consider the disparity in the property division and improperly considered Larry's part-time job and the temporary spousal maintenance order. We review these issues in turn for an abuse of discretion. *Cullum v. Cullum*, 215 Ariz. 352, ¶ 9, 160 P.3d 231, 233 (App. 2007).

Consideration of Property Distribution

¶14 Larry first argues the trial court abused its discretion by failing to consider the property value disparity in calculating the spousal maintenance obligation. He argues that this failure resulted in Terri receiving more than she was otherwise entitled. He appears to contest only the amount and duration of the payments, not whether Terri was entitled to spousal maintenance at all.

¶15 The trial court determines the amount and duration of spousal maintenance with reference to the factors found in § 25-319(B). *See Leathers v. Leathers*, 216 Ariz. 374, ¶ 10, 166 P.3d 929, 932 (App. 2007). The statute requires a court to "consider all relevant factors," and lists thirteen criteria, including the parties' standard of living during the marriage, duration of the marriage, age, employment history, and earning ability of the spouse seeking

maintenance, comparative financial resources of the spouses, and apportionment of marital property. § 25-319(B). The court's determination is made on a case-by-case basis that recognizes some factors will not apply. *Cullum*, 215 Ariz. 352, ¶ 15, 160 P.3d at 234. That the statute requires the court to consider every relevant factor does not mean the court must make a specific finding on every factor. *See Elliott*, 165 Ariz. at 131 n.1, 796 P.2d at 933 n.1.

¶16 In its unsigned ruling, the trial court concluded Terri was entitled to maintenance pursuant to § 25-319(A) because (1) she lacked sufficient property to provide for her reasonable needs; (2) she was unable to be self-sufficient through appropriate employment and lacked earning ability in the labor market; (3) the "marriage was of long duration (28 years)"; and, (4) she was "of an age (56 years) that may preclude the possibility of gaining employment to be self-sufficient."

¶17 In computing the amount and duration of maintenance under § 25-319(B), the court stated:

> The Court has . . . considered the relevant factors pursuant to A.R.S. [§25-]319(B), specifically, the age of the wife, the duration of the marriage, the earning ability and the physical condition of both spouses, the comparative financial resources of the parties and the ability of the husband to meet his own needs while providing for the needs of the wife.
>
> The Court has also considered the arguments as to valuation of the parties' respective personal property apportioned to them pursuant to Exhibit A of the decree and has factored the disparity of the value of each party'[s] property into its spousal maintenance decision. The Court accepts as fact the husband's version of the property values, but still believes the wife is entitled to spousal maintenance in a

> reduced amount from the amount awarded as temporary maintenance.

¶18 Larry's contention that the trial court failed to consider the disparity in the property division is not supported by the record. The court did not err on this basis.

¶19 Larry also appears to argue that the spousal maintenance award was too high to account for the unequal property division in addition to Terri holding a minimum wage job. Although the trial court found in its unsigned ruling that Terri would not be able to find employment, Larry contends the court actually apportioned to her a minimum-wage job, based on a statement it made during a subsequent hearing.

¶20 Two months after the trial concluded, the trial court held a hearing on Terri's objections to Larry's proposed dissolution decree. During the hearing, the court responded to Terri's complaint that the court had not "taken care of her" and stated that it had attributed minimum wage to her and therefore it was time to start looking for a job. The court did not state it was augmenting or altering its earlier findings, nor did it specify how many hours of work it imputed to Terri.

¶21 Based on the assumption that the trial court augmented its earlier findings with the above statement, Larry argues his mathematical calculation shows the court could not have accounted for both the property division and a minimum wage job. Terri requested $1,500 to meet her reasonable needs, and using that as a starting point, Larry argues that a minimum-wage job would bring spousal maintenance down to $184 per month based on full-time wages. He then contends those amounts should be further reduced because of the unequal property division. He does not explain how the property division would be factored in, but he appears to be

arguing it would result in a dollar-for-dollar reduction of his spousal maintenance payments.[4]

¶22 Larry cites no case law or other authority to support the proposition that the trial court must make a dollar-for-dollar reduction of maintenance due to the property division. And, the court did not make any findings stating or suggesting that Terri was expected to sell or rent items of property to support herself. Additionally, Larry does not specify where in the record the court stated how many hours Terri would likely work, or if commuting costs to the nearest city would be deducted.

¶23 The record shows the trial court concluded Terri would have difficulty finding work, and it would not be enough to sustain her. Given the court's written factual findings regarding Terri's possible difficulties in finding employment at the age of fifty-six, as well as undisputed evidence of Terri's employment for only three months of a twenty-eight-year marriage, and its acknowledgment of Larry's earning capacity, the court did not abuse its discretion in awarding Terri permanent spousal maintenance in the amount of $800 per month. *See Rainwater v. Rainwater*, 177 Ariz. 500, 504-05, 869 P.2d 176, 180-81 (App. 1993) (upholding award of $1,200 per month until wife's death or remarriage).

Effect of Secondary Employment on Spousal Maintenance

¶24 Larry further contends that the trial court erred by taking into account earnings from his second, part-time job in calculating the amount of spousal maintenance. Evidence at trial, including Larry's testimony, established he earned about $2,400 per month at his full-time job as a building inspector for Graham County. Since 1994, Larry also has worked part-time teaching woodshop at a community college, generating another $1,500 to $1,600 per month during the fall and spring semesters.

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[4]Larry argued before the trial court that the property disparity should have been used as a dollar-for-dollar offset, so he would not have to pay anything until what he owed to Terri passed $75,000.

¶25 Larry relies on *McNutt v. McNutt*, 203 Ariz. 28, ¶ 17, 29 P.3d 300, 304 (App. 2002), for the proposition that a party should be able to choose to work additional hours without increasing a support obligation. That case, however, did not address spousal maintenance, but rather interpreted sections of the Arizona Child Support Guidelines, which state that a parent is "generally not expected . . . [to] earn income greater than what would be earned from full-time employment." *Id.* ¶ 11; A.R.S. § 25-320 app. § 5(A). No such guideline exists here.

¶26 Larry also relies on two out-of-state cases, both of which suggest they are limited to their facts, and are both distinguishable. In the first, *In re Marriage of Smith*, the California Court of Appeal affirmed a trial court's order modifying a spousal maintenance award, finding that the marital standard of living should have been based on what the husband would have earned had he worked a "reasonably human pace," rather than working "excessive hours."[5] 274 Cal. Rptr. 911, 917, 925 (Ct. App. 1990). As Larry concedes, however, the court clarified in a footnote that its reasoning was case-specific, stating that income from overtime or a second job "must be considered by the trial court," but "how it is to be considered in a particular case is within the discretion of the trial court." *Id.* at 925 & n.15.

¶27 In *Stuczynski v. Stuczynksi*, the husband was employed full-time when he left the home, but then took a second job at an additional thirty hours per week after the parties separated "'[t]o take care of the responsibilities from the house that I just left and to enable [wife] to acquire employment or schooling to get employment.'" 471 N.W.2d 122, 125 (Neb. 1991). The Nebraska

[5]California courts interpreted the version of the state's spousal maintenance statute in effect at the time of *Smith* as directing courts to use the marital standard of living as a "'basis' or reference point" for determining support. 274 Cal. Rptr. at 919. The court in *Smith*, therefore, was focused on calculating the marital standard of living as a starting point, where the couple had lived beyond their means, and the husband had worked an average of sixty hours per week. *Id.* at 918-920.

Supreme Court held the trial court had abused its discretion by including the second job in the income calculation. *Id.* at 126.

¶28 Both cases are distinguishable. Larry did not testify about how many extra hours he had worked due to the teaching job, and there is no evidence he worked a total of sixty or more per week, as the husbands did in *Smith* and *Stuczynksi*. *Smith*, 274 Cal. Rptr. at 914; *Stuczynksi*, 471 N.W.2d at 125. Furthermore, Larry held the part-time teaching job for eighteen years before the divorce, unlike the husband in *Stuczynski*, who only took the second job to help his family at the beginning of the parties' separation. *Stuczynksi*, 471 N.W.2d at 125. *Smith* and *Stuczynski* do not support Larry's argument.

¶29 Additionally, both cases observed that a trial court can consider some additional employment depending on the number of hours, circumstances leading to it, and the duration during the marriage. *Smith*, 274 Cal. Rptr. at 925 n.15; *Stuczynksi*, 471 N.W.2d at 126. "[H]ow it is to be considered in a particular case is within the discretion of the trial court." *Smith*, 274 Cal. Rptr. at 925 n.15. We agree. It is for the trial court to decide how much to award a party for spousal maintenance after taking into consideration the factors enumerated in § 25-319(B). *Cullum*, 215 Ariz. 352, ¶ 15, 160 P.3d at 234. Nothing in § 25-319(B) states or suggests the court may not consider the fact that a party took a second job. Rather, income from a second job is relevant to several of the enumerated factors, particularly determining the standard of living during the marriage and the comparative financial resources and earning abilities of the spouses. *See* A.R.S. § 25-319(B)(1), (5). The trial court did not abuse its discretion by considering Larry's income from his second job.[6]

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[6]In so deciding, we are not, as Larry contends, "forc[ing] [him] to so work forevermore." If Larry's income changes in the future, he may request modification of the spousal maintenance order at that time pursuant to A.R.S. § 25-327(A), which allows for modification of a divorce decree upon a showing of "changed circumstances that are substantial and continuing." *See Chaney v. Chaney*, 145 Ariz. 23, 26, 699 P.2d 398, 401 (App. 1985) ("[E]ven a permanent spousal maintenance award is subject to modification.").

Temporary Spousal Maintenance Order

¶30 Larry next contends the trial court erred in considering an earlier temporary spousal maintenance order in determining how much to award for permanent spousal maintenance, rather than relying on the spousal maintenance factors outlined in § 25-319. Larry points to the court's finding that "the wife is entitled to spousal maintenance in a reduced amount from the amount awarded as temporary maintenance" as evidence of the court's alleged wrongful reliance on the temporary orders instead of the factors in § 25-319.

¶31 As noted above, the trial court expressly stated which statutory spousal maintenance factors it had considered. The passing reference to the earlier temporary maintenance order does not establish that the court relied on the temporary order. Furthermore, Larry cites no authority, and we are aware of none, that stands for the proposition that a court's consideration of, let alone mere reference to, previous temporary orders constitutes error. We find no error in the court's reference to the temporary spousal maintenance order here.

Inequitable Property Distribution

¶32 Finally, Larry argues in the alternative that, assuming the trial court did not consider the disparity in the property division, that division was inequitable. As noted above, the court made specific findings of fact establishing it had factored the disparity into its spousal maintenance decision. Because Larry's last argument necessarily relies on our conclusion that the court did not take the property agreement into account, we need not address it further.

Disposition

¶33 We affirm the dissolution and decree. Larry requests attorney fees as the prevailing party pursuant to A.R.S. § 12-341.01(C), and Terri requests attorney fees and costs pursuant to A.R.S. § 25-324 upon compliance with Rule 21, Ariz. R. Civ. App. P. Larry did not prevail on appeal, therefore we do not consider his request.

¶34 Regarding Terri's request, we must consider "the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings," to determine whether to award attorney fees under the statute. A.R.S. § 25-324(A). The purpose is remedial. *Bell-Kilbourn*, 216 Ariz. 521, ¶ 13, 169 P.3d at 114 (fees assist party least able to pay). Both parties' positions were reasonable in the trial court. Although the affidavits of financial information show that Larry has greater financial resources than Terri, the disparity is not such as to require an award of fees. Taking into account the reasons for affirming the award and the disparate financial positions, in our discretion we decline to award either party attorney fees. As the prevailing party on appeal, however, Terri is entitled to reimbursement of her costs upon compliance with Ariz. R. Civ. App. P. 21(a).